

S/L 7
11.01.2023
Court No.652
SD

CO 2086 of 2021

Maya Debnath
Vs.
Uttam Sarkar & Anr.

Mr. Asis Chandra Bagchi
Mr. Soumyadeep Biswas

...for the Petitioner.

Mr. Kartick Kr. Bhattacharyya
Mr. Subhas Chandra Datta
Ms. Soumashree Dutta

...for the Opposite Parties.

Being aggrieved and dissatisfied with the Order no.10 dated 23.02.2021 passed by the learned Civil Judge (Junior Division), Tehatta, Nadia in Pre-emption Case No.7 of 2019, present revisional application has been preferred.

By the impugned order, the learned court below allowed the petitioners/opposite parties to deposit the consideration amount along with compensation amount in a pre-emption case filed by the opposite party/preemptor at a subsequent stage of proceeding.

The petitioner submits that the petitioners/opposite parties filed the aforesaid Pre-emption Case No.7 of 2019 and along with the said petition, disputed the actual consideration money passed during transfer and accordingly filed a petition for exempting the petitioner for filing consideration money mentioned in their deed, till assessment of actual valuation by the court.

The opposite parties/petitioners herein appeared in the said case and filed written objection to the statements so contained by the petitioner and denied all material allegations. Learned court below upon consideration of preemptors' aforesaid petition along with the objection filed by the opposite parties/petitioners herein passed the impugned order on February 23, 2021 by allowing the opposite party herein/petitioners to deposit the consideration amount along with compensation amount in connection with such prayer for preemption.

Learned counsel appearing on behalf of the petitioner submits that the court below failed to appreciate that the petitioners/opposite parties herein are duty bound to deposit the entire consideration price mentioned in the deed along with 10% compensation amount at the time of filing of the application, failing which prayer for pre-emption is liable to be rejected.

He further submits that in view of the latest judgment passed by the Supreme Court in *Barasat Eye Hospital & Ors. vs. Kaustabh Mondal* reported in (2019) 9 SCC 767 and also another judgment of *Abdul Matin Mallick vs. Subrata Bhattacharjee* reported in (2022) 7 SCC 147 it is now well settled that the pre-requisite to even endeavour to exercise the weak right of pre-emption is the deposit of the amount of sale consideration and the 10% levy on that consideration, as otherwise, section 8(1) of the said Act will not be triggered off.

He further submits that there cannot be any extension of time granted to the petitioners/opposite parties to exercise the right under Section 8 of the West Bengal Land Reforms Act and the learned court below has erred in rejecting the petition while allowing the opposite parties to deposit the amount even after expiry of the period as per provisions of law.

Learned counsel appearing on behalf of the opposite parties submits that the law laid down by the Apex Court in *Barasat Eye Hospital & Ors. (supra)* and subsequent judgment do not have any application in the present context. The said judgment of *Barasat Eye Hospital & Ors. (supra)* and all subsequent judgments came after filing of the present case. Moreover, learned Trial Court was justified in observing that during the Covid-19 period the normal functioning of the Court was suspended and the Apex Court by its judgment in reference to the extension of time was pleased to observe that the period from 15.3.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

He further submits that when the prayer of the petitioners/opposite parties for exempting him to deposit the consideration amount was rejected by the court, in view of law laid down by Apex Court in the said judgment, he at once deposited the entire consideration money along with

compensation amount on 02.3.2021 which is reflected in the order of the trial court.

I have carefully considered the submissions made by both the parties.

On perusal of the order sheet, it appears that on 29.7.2019 the preemptor/opposite parties herein filed preemption case along with a petition supported by affidavit praying for assessing actual value of the suit property and by another petition supported by affidavit prayed for passing order exempting the petitioners from depositing the consideration money, till the assessment of the actual valuation of the suit property, by the learned court below.

It further appears from the order no.2 dated 04.9.2019 that relying upon judgment of this court reported in 2016 (3) ICC 270 and the valuation certificate submitted by the preemptor from government office, wherefrom it appeared that the consideration money in government record is less than the consideration money mentioned in the deed, the court below by the said order dated 04.9.2019, was pleased to observe that the said pre-emption proceeding will continue till the consideration money is fixed by the court below and kept the said two petitioners pending. The judgment of *Barasat Eye Hospital & Ors. (supra)* was passed on 17.10.2019. Subsequently, when *Barasat Eye Hospital & others (supra)* judgment and subsequent judgments were passed, the said two applications filed by the petitioner/pre-emptor were taken up for consideration by

the court below and before the court below at the time of hearing the judgment of *Barasat Eye Hospital & Ors.* (*supra*) was also referred. Learned court below after considering the deliberation made by both the parties was pleased to observe as follows:-

“6. Thus from the above it is crystal clear that the petitioner has to deposit the consideration money and compensation therein in regard to the deed value in order to proceed with the case and it is also clear that there is no scope of assessment of actual valuation of suit property at the stage unless it is found out after trial that the suit valuation is less and that the petitioner has deposited excess amount.

7. Considering the above deliberation and the observation made in Barasat Eye Hospital Thr. Its Rep. Verses Kaustabh Mondal on 17th October, 2019 by the Hon’ble Supreme Court of India, both the petitions of the petitioner for exemption to deposit the consideration money alongwith compensation of the case property value and for assessing the actual valuation of the suit property is hereby considered and rejected.

8. It is also evident from the above ruling that the proceeding will not lie at all if the consideration amount is not deposited within one year of cause of action and in this instant proceeding the cause of action arose from 02.7.2019 whereby the limitation period was over on 02.7.2020.

9. Having said that, this court is also not oblivious to the facts that almost the entire year of 2020 or at least the majority of that year was clouded by lock down and restrictions due to the menace of Covid-19 and computing those periods to be within the period of limitation will be harsh and unjustified upon the petitioner and will not subserve the ends of justice.

10. *Considering the above this court is of the opinion that an opportunity is to be given to the petitioner to contest this instant case. thus, the petitioner is directed to deposit the consideration amount alongwith compensation amount at once and in default the instant proceeding will be dismissed.*

To 03-03-2021 for depositing consideration money”

The opposite parties/preemptors in compliance with the aforesaid order on 02.3.2021 i.e. one day before the schedule date fixed by court deposited said amount before the court below.

In view of the aforesaid facts and circumstances, it appears to me that the court below was quite justified in allowing the petitioner to deposit the consideration amount along with the compensation amount by 03.3.2021 after rejecting the petitioners’ prayer and the petitioners at once complied the court’s order in view of the latest changed position of law prevailing in the country.

Though ignorance of law is of no excuse either on the part of court or on the part of litigant but considering the peculiarities of the case and that court below, initially allowed the proceeding to be continued till consideration money is fixed by the court in terms of law prevailing at that point of time and that afterwards a considerable period of time court could not function properly and that pre-emptor immediate after court’s direction to deposit the amount in term of latest position of law, has duly complied order in it’s letter and spirit, it appears to me that though the law is now

well-settled in view of the *Barasat Eye Hospital & Ors.* (*supra*) which was passed on 17.10.2019 on this point but since this case was filed prior to the aforesaid case and since the trial court at the time of filing of the application relying upon other judgment was pleased to order that the proceeding will continue till consideration money fixed by this court, the petitioner/pre-emptors must not be made sufferer or victim of the circumstances, which appears to be not intentional nor has been caused to make delay in disposal. In view of above I find that the law laid down in the *Barasat Eye Hospital & Ors.* (*supra*) and subsequent judgments do not squarely applicable in the present context. As such, I do not find subsatance in the present revisional application.

Accordingly, CO 2086 of 2021 is dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)